

SENATE BILL REPORT

E2SHB 1799

As Reported by Senate Committee On:
Environment, Energy & Technology, February 23, 2022
Ways & Means, February 28, 2022

Title: An act relating to organic materials management.

Brief Description: Concerning organic materials management.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Berry, Duerr, Riccelli and Harris-Talley).

Brief History: Passed House: 2/11/22, 56-42.

Committee Activity: Environment, Energy & Technology: 2/17/22, 2/23/22 [DPA-WM, DNP].

Ways & Means: 2/26/22, 2/28/22 [DPA (ENET), DNP, w/oRec].

Brief Summary of Amended Bill

- Establishes state goals related to organic materials management, and requires county solid waste plans to identify priority areas and a volumetric capacity for managing organic materials in a manner consistent with state goals.
- Requires certain local governments to provide source-separated organic materials collection services, and requires certain businesses to arrange for organic materials management services.
- Amends civil and criminal liability standards applicable to the donation of food.
- Creates the Washington Center for Sustainable Food Management within the Department of Ecology.
- Establishes and expands funding programs to promote organic materials management.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Requires county and city development regulations to allow for the siting of organic materials management facilities in priority areas consistent with local solid waste plans and to the extent necessary to achieve state organic materials management goals.
- Requires certain local governments to adopt an ordinance addressing procurement of finished compost materials.
- Amends standards related to the labeling of plastic and compostable products.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Liias, Lovick, Nguyen, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators Short, Ranking Member; Brown, Fortunato, Schoesler and Sheldon.

Staff: Gregory Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Environment, Energy & Technology.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Billig, Carlyle, Conway, Dhingra, Hunt, Keiser, Pedersen, Rivers, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Braun, Gildon, Mullet, Muzzall, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Hasegawa.

Staff: Jed Herman (786-7346)

Background: Solid Waste, Organic Materials, and Food Waste Management. Under the state's solid waste management laws, local governments are responsible for implementing

state solid waste management requirements. The Department of Ecology (Ecology) works cooperatively with local governments as they develop their local solid waste management plans. Ecology also evaluates, analyzes, and monitors the state's solid waste stream, and develops a statewide solid waste plan.

County and city solid waste management plans are required to contain certain elements, including a waste reduction and recycling element. This element must include waste reduction strategies, recycling strategies, and source separation strategies.

In 2019, Washington established a goal to reduce the annual generation of food waste by 50 percent by 2030. A subset of the goal includes a prevention goal related to edible food waste. In order to achieve the 2030 food waste reduction goal, Ecology, working with other state agencies, adopted the Use Food Well Washington plan in December 2021. The plan identifies a total of 30 recommendations to reduce food waste, including recommendations:

- to create a Washington Center for Sustainable Food Management;
- related to the liability protections for persons that donate food;
- for funding or financial incentives for certain activities supportive of food waste reduction goals; and
- for changes to data management, public outreach, coordination, and new programmatic activities to be implemented by public entities.

Good Samaritan Food Donation Act. Under Washington's Good Samaritan Food Donation Act, persons are not subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product donated in good faith to a nonprofit organization for distribution to needy individuals. This exception from civil or criminal liability does not apply to injury or death of a user or recipient of a donation resulting from gross negligence or intentional misconduct of the donor. If some or all of donated food and grocery products do not meet all quality and labeling standards imposed by federal, state, or local laws and regulations, the donator of food is not subject to civil or criminal liability only if the nonprofit organization that receives the donated food or grocery products is informed by the donor of the condition of the donated food or grocery products, agrees to recondition the food to comply with quality and labeling standards, and is knowledgeable of the standards to properly recondition the donated food or grocery product.

Compost Procurement Requirements. Since 2020, state agencies and local governments have been required to consider whether compost products can be used in government-funded projects when planning or soliciting and reviewing bids for government-funded projects. If compost products can be utilized in the project, the agency or local government must do so, except if:

- compost products are not available within a reasonable amount of time;
- compost products that are available do not meet existing purchasing standards or federal or state health and safety standards; or
- compost purchase prices are not reasonable or competitive.

Product Degradability Labeling Requirements. Products that are labeled as compostable and sold, offered for sale, or distributed for use in Washington by a manufacturer or supplier, must:

- either be comprised of only wood or fiber-based substrate, or must meet the American Society of Testing and Materials (ASTM) standards for products designed to be composted in municipal or industrial facilities that are made of plastic or that incorporate plastic coatings onto paper or another substrate;
- meet Federal Trade Commission (FTC) green guide labeling requirements; and
- feature labeling that uses a logo indicating that the product has been third-party certified as meeting ASTM standard specification, displays the word "compostable," and meets industry standards for being distinguishable upon quick inspection. Compostable products must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks.

Food service products and film products, including film bags, that do not meet ASTM standards are:

- prohibited from using tinting, labeling, and terms that are required of products that meet ASTM standards;
- discouraged from using coloration, labeling, images, and terms that confuse customers into mistakenly identifying noncompostable products as compostable; and
- encouraged to use identifying features that indicate whether a product is recyclable or must be disposed of as waste.

Summary of Amended Bill: State Organic Materials Management Goals. The state establishes the following goals for organic materials management:

- a 75 percent reduction in the amount of organic materials disposed in landfills by 2030, relative to 2015 levels; and
- at least 20 percent of the volume of edible food disposed of is recovered for human consumption by 2025, relative to 2015 levels.

Organic materials include manure, yard waste, food waste, food processing wastes, wood wastes, and garden waste. Organic materials do not include chemically or biologically contaminated materials that would render the finished product of an organic material management process, such as composting or anaerobic digestion, unsuitable for general public or agricultural use.

Organic Materials Management Requirements for Businesses. Beginning July 1, 2023, Ecology must determine which counties and cities preparing solid waste plans:

- provide for businesses to be serviced by providers that collect food waste and organic waste for delivery to solid waste facilities that provide for organic materials management, including composting, anaerobic digestion, vermiculture, black soldier fly, or similar technologies; and
- are serviced by solid waste facilities that provide for organic materials management

and have capacity to accept increased volumes of organic materials deliveries.

Ecology must determine that organics material collection service requirements apply to certain businesses within a local jurisdiction unless Ecology determines that businesses in some or all portions of the city or county have no available organic materials collection services, or there is no available capacity at solid waste facilities to which organic materials could feasibly and economically be delivered.

In jurisdictions or portions of jurisdictions subject to the requirements, businesses must arrange for organic materials management services:

- beginning January 1, 2024, for businesses that generate at least 8 cubic yards of organic waste per week;
- beginning January 1, 2025, for businesses that generate at least 4 cubic yards of organic waste per week; and
- beginning January 1, 2026, for businesses that generate at least 4 cubic yards of solid waste per week. However, Ecology may determine by rule that additional reductions in the landfilling of organic materials would be more effectively achieved, at reasonable cost to businesses, by establishing a different volumetric threshold than 4 cubic yards per week of solid waste.

Businesses may satisfy the management requirements by source-separating organic waste from other waste and subscribing to and using an organic materials collection and management service, managing organic waste on-site, self-hauling organic waste for organic materials management, or for a business engaged in the growth, harvest, or processing of food or fiber, entering into a voluntary agreement to sell or donate organic materials to another business for off-site use. The following wastes do not count for purposes of determining waste volumes for the thresholds requiring management services:

- wastes that are managed on-site by the generating business;
- wastes generated from the growth and harvest of food or fiber that are managed off-site by another business engaged in the growth and harvest of food or fiber;
- wastes that are managed by a business that enters into a voluntary agreement to sell or donate organic materials to another business for off-site use; and
- wastes that are generated in exceptional volumes as a result of a natural disaster or other infrequent and unpreventable event.

Businesses subject to these requirements that arrange for gardening or landscaping services must require through contracts or work agreements that wastes generated by those services receive qualifying types of organics materials management. Businesses are not required to dispose of materials in a manner that conflicts with safety or health laws, and are not required to dispose of wastes generated in exceptional volumes from natural disasters through composting, digestion, or other organic material management options. Jurisdictional health departments may enforce these requirements on businesses, but must issue two written notices prior to issuing penalties, and may not charge businesses a fee associated with the administration and enforcement of these requirements.

Local Government Collection, Management, and Siting. Beginning January 1, 2027, each county or city that implements a local solid waste plan must provide source-separated organic solid waste collection services at least either biweekly or 26 weeks annually to all residents and to non-residential customers that generate at least 0.25 cubic yards of organic materials per week, and must provide for organic materials management of collected organic materials.

Cities and counties may charge and collect fees or rates for these services, consistent with existing authority to impose fees and rates for solid waste collection services.

The organic material collection service and management requirements do not apply:

- in counties and cities that have a population of less than 25,000;
- in counties and cities that disposed of less than 5,000 tons of solid waste in the most recent year such data were available;
- in counties not planning under the Growth Management Act (GMA), in census tracts that have a population density of less than 75 people per square mile and are located in an unincorporated portion of a county;
- in counties planning under the GMA, outside of designated urban growth areas; or
- in counties and cities that receive a renewable waiver from Ecology applicable to all or part of a jurisdiction. Waivers may be issued for up to five years and based on consideration of the distance to organic materials management facilities, the sufficiency of capacity at local organic materials management facilities to manage additional materials, and pest control restrictions established by the Department of Agriculture (WSDA).

Any cities that newly begin implementing an independent solid waste plan after July 1, 2022, must meet organic material collection requirements.

Beginning January 1, 2030, Ecology may adopt a rule that applies organic materials collection service and management requirements to exempted jurisdictions, but only if Ecology determines that the state goals have not or will not be achieved.

When newly developing, updating, or amending local solid waste management plans after July 1, 2024, each county solid waste plan must consider the transition to providing organic materials collection services to residents and non-residential customers in 2027. Each county solid waste plan must identify:

- priority areas within the county for the establishment of organic materials management facilities. Priority areas must be in industrial, agricultural, or rural zones and may not be located in overburdened communities identified by Ecology under environmental justice laws; and
- the organic materials management volumetric capacity required to manage the county's organic materials in a manner consistent with the state goals.

When newly developing, updating, or amending local solid waste management plans after January 1, 2027, local solid waste plans must be consistent with the requirement to provide organic materials collection services to residents and non-residential customers.

For cities and counties planning under either the GMA or planning enabling statutes, development regulations to implement comprehensive plans that are newly developed, updated, or amended after January 1, 2025, must allow for the siting of organic materials management facilities in the areas designated in county solid waste plans to the extent necessary to provide for the establishment of the organic materials management volumetric capacity identified as part of the county solid waste plan.

Compost Procurement. By January 1, 2023, cities and counties with a population greater than 25,000, or in which organic material collection services are provided, must adopt a compost procurement ordinance to implement the 2020 requirement for local governments to consider the use of compost products in projects and to use compost products in a project except when availability, health, quality, safety, or price-competitive criteria are not met.

In developing a compost procurement ordinance, cities and counties must plan for the use of compost in landscaping projects, soil amendments, and other applications. Cities and counties with a compost procurement ordinance must develop strategies to inform residents regarding the jurisdiction's use of compost and the value of compost. Local governments must give priority to purchasing compost products from companies that produce compost locally, are certified by a nationally recognized organization, and produce products derived from municipal solid waste compost programs and meet quality standards.

Local governments may enter into collective purchasing agreements if cost-effective or efficient to do so. Contracts by a local government or state agency must require the use of compost products to the maximum extent economically feasible to meet the compost use requirements. Every two years beginning in 2024, cities and counties with a compost procurement ordinance must submit a report to Ecology covering the previous year's compost procurement activities.

Local governments may allow for the preferential purchase of compost in order to meet the compost use requirements.

Liability Standards for Food Donations. The civil and criminal liability protections that apply to food donated to nonprofit organizations are expanded and amended:

- to apply to food donated directly to end recipients for consumption by a person required to have a food establishment permit under Department of Health rules, including grocery stores and restaurants;
- to apply to the donation of perishable food that is fit for human consumption but that has exceeded the labeled shelf-life date recommended by the manufacturer, if the person donating the food makes a good faith evaluation that the food is wholesome; and

- to apply to donated food and grocery products that meet safety and safety-related labeling standards, rather than all quality and labeling standards. Safety and safety-related labeling standards are defined to include markings that communicate information to a customer about a product's safety, but which does not include pull dates required under state law or similar phrases intended to communicate information to a customer regarding the freshness or quality of a product.

Center for Sustainable Food Management. The Washington Center for Sustainable Food Management is established within Ecology, to begin operations by January 1, 2024. The purpose of the center is to help coordinate statewide food waste reduction. The center may perform several activities for this purpose, including:

- measuring progress towards statewide organic materials management and food waste reduction goals;
- coordinating implementation of food waste reduction plans;
- maintaining a website with food waste reduction guidance;
- coordinating public-private and nonprofit partnerships, and collaborating with federal, state, and local government partners;
- developing maps or lists of locations of food systems in Washington;
- collecting and maintaining data on food waste and wasted food and measurement methodologies for tracking food donation, food waste, and climate impact data;
- distributing and monitoring grants related to food waste prevention, rescue, and recovery;
- supporting the adoption of local government solid waste ordinances or policies that establish a financial disincentive for organic waste generation and for the disposal of organic materials in landfills; and
- developing food waste reduction and food waste contamination reduction campaigns and promotional materials for distribution.

To obtain data to support the center's goals, Ecology may establish a voluntary reporting protocol for the receipt of information regarding food donations. Ecology may request that a donating business or food recipient provide information regarding the volume, types, and timing of food managed by the donating facility.

By January 1, 2025, Ecology must research and adopt model ordinances for optional use by cities and counties. The model ordinances must provide model mechanisms for commercial solid waste collection and disposal that are designed to establish a financial disincentive or other disincentives for the generation of organic waste and the disposal of organic materials in landfills. Ecology must review the model ordinances under the State Environmental Policy Act (SEPA). A county or city that adopts a model ordinance created and reviewed under SEPA by Ecology is not required to do its own SEPA review of the ordinance.

Funding for Organic Materials Management. Composting and organic materials management facilities are explicitly included among the solid waste facilities that may be funded as public works projects by the Public Works Board from the Public Works

Assistance Account.

The allowable uses of grant funds under the Sustainable Farms and Fields Grant Program are expanded to include:

- the purchase of compost spreading equipment, or financial assistance to farmers to purchase compost spreading equipment, for the annual use for at least three years of volumes of compost determined to be significant by the Washington State Conservation Commission, from materials composted at a site not owned or operated by the farmer;
- scientific studies on crop residue; and
- efforts to support farm use of anaerobic digester digestate.

WSDA must establish a compost reimbursement program for farming operations in Washington for the purchase and use of compost products that were not generated by the farming operation. Costs covered by the compost reimbursement program must include transportation, spreading equipment, and labor, fuel, and maintenance costs associated with spreading equipment. Grant reimbursements under the program begin July 1, 2023.

Prior to carrying out activities for which reimbursement is sought, farming operations must complete an eligibility review with WSDA. WSDA must review proposed transport and application of compost materials for compliance with state pest control rules. Soil sampling by WSDA must be allowed by program participants. Applicants may not seek reimbursement for purchase or labor costs for its own compost products, from compost products transferred to another individual or entity, or from compost products that were not purchased from a facility with a solid waste handling permit. Farming operations are eligible to receive reimbursement for up to 50 percent of their costs incurred each fiscal year, in an amount up to \$10,000 per fiscal year. WSDA must submit an annual report to the Legislature each year on program performance metrics.

Product Degradability Labeling Requirements. Product degradability labeling standards are amended to:

- require compostable products that meet ASTM standards to use green, brown, or beige labeling, color striping, or other marks that help differentiate compostable items from non-compostable materials;
- allow film bags to be tinted beige, in addition to green or brown; and
- require compostable food service products and film products to be at least partially tinted or colored green, beige, or brown, or have a green, beige, or brown stripe or band at least .25 inches wide.

The entities subject to product degradability labeling requirements are redefined to include entities that sell products to end users as a retailer. Responsibility under the law as a producer is assigned to the manufacturer, if sold under the manufacturer's own brand or lacks identification of a brand; to the product brand or trademark licensee, if manufactured by a person other than the brand owner; or, if there is not a product manufacturer or brand

or trademark licensee over whom the state can exercise jurisdiction, to the importer or distributor of the product in or into Washington.

State enforcement responsibility for product degradability labeling requirements is transferred from the Office of the Attorney General to Ecology. Ecology may adopt rules pertaining to product degradability labeling requirements, and must begin enforcing requirements by July 1, 2024. Enforcement by Ecology and cities and counties must be based primarily on complaints, and Ecology must establish a forum to receive complaints. Producers of compostable products, including bags, film products, and food service products, must submit at least one compliance declaration to Ecology beginning in 2024 upon a product being sold or distributed into Washington, and again prior to any change in a product's method of compliance with compost labeling requirements. Ecology, in collaboration with cities and counties, must provide education and outreach to retail establishments, consumers, and suppliers, about product degradability labeling requirements.

Ecology-issued penalties are appealable to the Pollution Control Hearings Board (PCHB), and Ecology-issued penalties must be imposed consistent with standard protocols for penalties that are appealable to the PCHB. The Compostable Products Revolving Account is repealed, and state penalty recoveries are credited to the State General Fund.

Funding Study. Ecology must contract with a third-party consultant to study the adequacy of local solid waste management funding. Ecology must include counties, cities, and the solid waste industry in scoping the study and reviewing the consultant's findings and recommendations, and must submit a report to the Legislature by July 1, 2023. The study must:

- consider jurisdiction type, location, size, service level, and other differences between cities and counties;
- review funding types and funding models, including models used by solid waste programs in jurisdictions outside of Washington; and
- consider the impacts to city and county solid waste funding resources from statewide solid waste management policy proposals that have been enacted or considered in the past four years.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Provides that wastes managed by a business that enters into a voluntary agreement to sell or donate organic materials to another business for off-site use do not count for purposes of determining the waste volume threshold for business organics management requirements.
- Allows businesses engaged in the growth, harvest, or processing of food or fiber to fulfill their organics management requirements by entering into a voluntary agreement to sell or donate organic materials to another business for off-site use.

- Removes provisions allowing the use of a good Samaritan reduced price for food donation liability purposes.
- Clarifies references to local solid waste management comprehensive plans and land use comprehensive plans for purposes of development regulations that implement prioritized areas for siting organics management facilities. Amends reference to identifying overburdened communities for purposes of siting facilities to consider all potential environmental impacts.
- Allows compostable food service items to use a green, beige, or brown stripe or band at least 0.25 inches wide to meet product labeling and identification requirements.
- Removes reference to management of packaging and paper products through extended producer responsibility programs as part of legislative proposals to consider in the evaluation of impacts to solid waste funding resources for purposes of the solid waste management funding study.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: The California process, which the bill is modeled after, has been underway for years. We just need to make sure we have the right length of time to do this work, as siting is a complicated issue. There is support for mandatory color marking and labeling for compostable products. Contamination of compost products is a huge problem and consumer confusion increases contamination.

Methane is one of the most potent greenhouse gases. This bill works in complement with the bill requiring emissions controls for landfills. Organic waste makes up almost 30 percent of landfill and incinerated waste. This bill helps set us on the road for reaching statutory greenhouse gas requirements.

Food waste is a huge problem and fossil fuels are used all throughout the production process, all of which is wasted if we don't eat the food. This bill creates jobs from the additional composting facilities. Massachusetts created 900 new jobs under similar legislation.

The state is uniquely positioned to encourage food donation. Establishment of the center is critical to implementing recommendations in the Use Food Well Washington Plan. There is strong support for the procurement provisions, as we need to ensure end markets for finished products.

CON: This bill fails to adequately address environmental impacts from compost facilities. Processing food waste is a noxious messy process that creates odors. Facilities do not care about impacts to surrounding communities. Numerous complaints have been filed against current facilities for odor violations and this should be addressed in the bill.

OTHER: Improvements will be expensive to implement. There is no dedicated funding for county solid waste programs and this will require huge investments in infrastructure and take years to complete. California's requirements have shown potentially significant cost increases for ratepayers.

We should only allow the food waste to be repurposed. The other wastes, yard wastes, and others contain pollution and pathogens which should not be spread on land. There are some duplicative standards around labeling of compostable materials, which is already well covered, and businesses would like to see an amendment to address this.

Ecology supports diversion of organic waste from landfills as an effective way to reduce emissions, and we also support establishment of the center for food waste and recovery work. Current organic management infrastructure does not exist to meet the goals in the bill, and we would like to see timelines to allow the infrastructure to be built to meet the goals.

We would like a clarifying amendment to recognize many businesses, those in agriculture and timber, already recycle residuals as part of operations. There is an underlying assumption that diverting organic waste will deal with the methane issue. Compost piles also generate methane. When waste is sent to landfills, the methane can be processed and used as a fuel.

Persons Testifying (Environment, Energy & Technology): PRO: Vicki Christophersen, Washington Refuse and Recycling Association; Janet Thoman, Compost Manufacturing Alliance; Deepa Sivarajan, Climate Solutions; Kate White Tudor, NRDC; Heather Trim, Zero Waste Washington; Aaron Czyzewski, Food Lifeline; Troy Lautenbach, Skagit Soils; Karen Dawson, Cedar Grove; Breean Beggs, Spokane City Council.

CON: Elliot Paull.

OTHER: Paul Jewell, Washington State Association of Counties; Darlene Schanfald; Peter Godlewski, Association of Washington Business; Laurie Davies, Department of Ecology; Scott Hazlegrove, Weyerhaeuser/BeefNW; Dave Warren, Klickitat PUD.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony on Bill as Amended by Environment, Energy & Technology (Ways & Means): PRO: This bill addresses food waste and yard waste going

to landfills that creates methane. We want to divert those waste materials to new technologies and composting.

CON: The bill does not do enough to protect the environment from the spread of forever chemicals like PFAS. There needs to be testing of all materials leaving landfills.

OTHER: EPA considers all municipal sewage sludge to contain toxic elements. Ecology pushes this material for use as fertilizer or compost. We are concerned ecology will use this new program as a backdoor to dispose of sludge. Any waste taken from landfills should be tested. Testing should be mandatory and sewage should not be allowed to be recycled. Elements of the bill related to labeling for compostable products is a bit duplicative. We have ideas for streamlining.

Persons Testifying (Ways & Means): PRO: Heather Trim, Zero Waste Washington.

CON: Monica Lowney, Concerned Citizen.

OTHER: Morton Alexander, Concerned citizen; Darlene Schanfald; Paige Kenney; Peter Godlewski, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.